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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.H. et.al., Persons Coming
Under the Juvenile Court Law.

B303470

(Los Angeles County
Super. Ct. No. 18CCJP05961)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Se.H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Jana M. Seng, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Acting
Assistant County Counsel, and Steven D. Watson, Deputy County
Counsel, for Plaintiff and Respondent.

Se.H. (Mother) appeals from the orders entered under Welfare and Institutions Code section 342 and section 300, subdivision (b)(1). removing her sons, R.H. and Si.H., from her custody based on Mother's failure to supervise them. Mother contends that substantial evidence did not support the jurisdictional finding or the disposition order. We disagree, and accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The family consists of Mother, her sons R.H. (born in 2004), and Si.H. (born in 2011), their father T.H. (the father), and another of Mother's children, the half sister, A.Q. (born 2002).¹

Since 2014, the Los Angeles County Department of Children and Family Services (DCFS) has investigated six referrals regarding the family, including allegations that Mother had emotionally and physically abused half sibling A.Q., that Mother and the boys' father had engaged in domestic violence,² and that Mother had mental health problems. Specifically, in 2015, the dependency court exercised jurisdiction over the children based on sustained allegations under section 300, subdivisions (a) and (b)(1) that Mother had physically abused A.Q. and engaged in violent

¹ Although subjects of the petition, A.Q., A.Q.'s father, B.S., and the boys' father, T.H., are not parties to this appeal.

² The parents were married from 2004 until they divorced in 2015. Prior to this dependency case, a family law order granted them joint legal custody of the boys, granted Mother primary physical custody, and granted the father visitation rights. The parents have had an acrimonious relationship, and do not communicate with each other. Throughout the case, the father complained that Mother would often deny him visitation with his sons.

altercations with the father in the children's presence. The court terminated its jurisdiction in the case in 2016.

A. *Current Proceedings—the Section 300 Petition*

In August 2018, A.Q.'s therapist contacted DCFS with concerns that during a joint therapy session Mother was emotionally abusive to A.Q. Mother made demeaning and hostile comments to the child and expressed an unwillingness to care for her. The therapist also reported that according to A.Q. as a result of Mother's ongoing emotional abuse, A.Q. had suffered emotional distress, anxiety, and depression. A.Q. confirmed to the DCFS investigators that Mother had been emotionally abusive to her and had locked her out of the family home several times. Mother refused to cooperate with the DCFS investigation; she was combative and defensive. A.Q. moved out of the family home and went to live with the maternal grandmother (grandmother). In September 2018, A.Q. was placed in a mental health treatment facility for two weeks for suicidal ideation. After A.Q. was released to the grandmother's home, she ran away.

On September 17, 2018, DCFS filed a petition under section 300, subdivisions (a), (b)(1), and (j), alleging Mother was unwilling to provide A.Q. parental care and supervision, which placed all three of the children at risk of harm. After A.Q. was located and returned to her grandmother's home, she disclosed to DCFS additional incidents of Mother hitting her with a belt, and DCFS thereafter amended the section 300 petition to allege Mother physically and emotionally abused A.Q.

The grandmother stated that Mother had made abusive statements to all of the children and engaged in behavior, which indicated Mother was emotionally and mentally unstable. Although Mother admitted to DCFS that she cursed at the children,

she denied the allegations of physical and emotional abuse, and she would not cooperate with the DCFS investigation. When the DCFS investigator interviewed R.H. and Si.H., they denied experiencing or witnessing any of the abuse; the investigator reported, however, that based on the children's answers and demeanor, it appeared that Mother had coached their responses. On September 18, 2018, the court ordered the children detained from both parents;³ A.Q. was placed with the grandmother, and the boys were released to Mother under DCFS supervision.

On July 11, 2019,⁴ the juvenile court sustained the section 300 petition allegations under section 300, subdivisions (b)(1), (c), and (j) of inappropriate physical discipline and emotional abuse of A.Q., which placed all three of the children at risk of harm. The court declared the children dependents, removed A.Q. from Mother's custody, and placed R.H. and Si.H. with Mother under DCFS supervision.⁵ The court also ordered Mother to participate in family preservation services, parenting classes, and individual counseling.

³ Although non-offending on the petition, the father submitted to the court's jurisdiction and did not seek custody of the boys.

⁴ The adjudication proceedings, originally scheduled for October 2018, were continued several times for DCFS to locate and provide notice to A.Q.'s father.

⁵ A.Q. remained with the grandmother.

B. *The Section 342 Petition*

On September 5, 2019, DCFS received a referral that Mother had left Si.H. (then seven years old) and R.H (then 15 years old) at home without appropriate adult supervision. The referral indicated that the children were at home alone while Mother was out of town for 10 days, and that Mother had reportedly left them with an unknown adult who failed to provide appropriate care or supervision for them. The referral further indicated that when Si.H. was alone at home and did not have a ride to school, R.H. called their father, who came to the house and took Si.H. to school.

Mother contacted DCFS the same day and claimed that the father “took” the children. She claimed that she was in San Francisco for work for 10 days, and refused to return. She did not, however, want the children to stay with the father because Mother did not like his fiancé. When asked about her plan for the children while she was in San Francisco, Mother stated her friend, L.A., was watching them. Mother said she left food and money for the children. The social worker informed Mother that because of the ongoing dependency case and DCFS’s supervision of the family, she should have notified DCFS that she was leaving the children with someone. The social worker explained that DCFS needed to investigate and clear anyone who would be watching the children. Mother responded that she would not allow DCFS to control her life and family.

When the social worker interviewed Si.H., he confirmed that Mother had left R.H. and him alone in the home while she was away in San Francisco. He reported that L.A. had come to the house but had stayed upstairs when she was there. He said that his brother did the cooking and that he and R.H. had missed several days of school because L.A. did not have time or a means to

get them to school. He reported that one of the mornings when they were left at home alone, R.H. called their father, who picked Si.H. up and took him to school. He also disclosed, “Mom has left me alone before, but not this long. I have worries about the windows at [M]om’s because people would always try to break in. I am scared there by myself. My mom had my dad blocked from my phone and didn’t want me to talk to him.”

R.H. confirmed Si.H.’s report and also disclosed that he and Si.H. were home alone for periods of time while L.A. was supposed to be staying with them. R.H. also reported that Mother had previously gone to San Diego and left them with her roommates. R.H. told the social worker that when Mother is at home, she “is not really a parent; she is just there;” R.H. explained that he takes care of Si.H., that he prepares their meals, gets Si.H. ready for school and spends time with him.

The social worker contacted L.A., who confirmed that Mother had asked her to stay with the children while Mother was out of town. L.A. claimed that she had fed the children and had taken Si.H. to school some of the days. L.A. also said that at some point while staying in Mother’s home, she discovered that the children were no longer in the house; she later learned that they were with their father, but L.A. did not know when they had left home.

The grandmother confirmed that Mother had left the children unsupervised on multiple occasions and that the children had excessive absences from school. She also said Mother prioritized her romantic relationships with men over the children, suffered from bipolar disorder, smoked marijuana and drank alcohol, and was mentally and emotionally abusive to the children. The grandmother reported that Mother would demean and curse at both children and would threaten them. She believed that Mother was

unable to meet the children's basic needs, and reported that the children had regularly come to her for food.

When the social worker contacted Mother to tell her that Si.H. was with the father and R.H. was staying with the grandmother and that neither child wanted to return to her custody, Mother said she was okay with R.H. not returning to her home, but wanted Si.H. returned immediately. Mother cursed at the social worker, threatened to take matters into her own hands, and refused to meet with anyone from DCFS. Mother repeatedly said she did not agree with the court ordering services and did not plan to participate in them. DCFS assessed that the children were at high risk of future neglect and that Mother was not in compliance with her court-ordered case plan.

On September 24, 2019, DCFS filed a section 342 petition alleging that the children were at risk of harm because Mother left them at home for days without appropriate adult supervision. The juvenile court detained the children from Mother, released them to the father, granted Mother monitored weekly visits, and ordered the parents to stay away from each other. On October 22, 2019, DCFS reported that in more recent interviews, the children now said they wanted to return to their Mother, denied that they had been left alone while Mother went to San Francisco and stated that Mother had made a plan for their care while she was away. The DCFS social worker reported that it appeared that the children had been coached by Mother to change their statements. DCFS attempted to contact Mother several times, but she never answered her phone and although it appeared to the social worker that Mother was at home when the social worker made unannounced visits, Mother would not answer the door.

On October 23, 2019, at the combined jurisdiction and disposition hearing on the section 342 petition, DCFS and the

children's counsel asked the juvenile court to sustain the section 342 petition and remove R.H. and Si.H. from Mother's custody. The juvenile court sustained the section 300, subdivision (b)(1) allegations based on findings that: "On 9/1/19 and on prior occasions, . . . [Mother] placed the children in a detrimental and endangering situation in that . . . [M]other left the children home for days without appropriate adult supervision. . . . [M]other left the children in the care of [an] unrelated adult . . . who failed to provide appropriate care and supervision to the children," which placed R.H. and Si.H. at risk of harm. When the court proceeded to the disposition, Mother requested that rather than remove the children from her custody, the court should consider the alternatives of releasing the children to her with DCFS making unannounced visits or ordering Mother to participate in services. DCFS opposed the alternatives pointing out that Mother had previously failed to comply with the case plan and refused to participate in court-ordered services and would not allow DCFS into her home when social workers made unannounced visits.

The juvenile court declared the children dependents, found DCFS had made reasonable efforts to prevent removal, removed the children from Mother's custody, placed them with the father, granted Mother unmonitored visits, and ordered Mother to participate in services.

Mother timely appealed the court's orders entered on the section 342 petition, specifically the jurisdictional findings under section 300, subdivision (b)(1), and the disposition order removing the children from her custody.⁶

⁶ Mother did not appeal from the jurisdiction and disposition orders entered on the original section 300 petition. Thus, irrespective of this court's conclusion with respect to

DISCUSSION

Mother argues that substantial evidence does not support the court's findings that she left the minors without adequate supervision which placed them at risk of harm, and she assails the disposition order removing the children from her custody, asserting that reasonable means existed to protect the children without removing them. We disagree.

We review challenges to the dependency court's jurisdiction and disposition orders for substantial evidence. Thus, our task begins and ends with a determination as to whether there is any substantial evidence, contradicted or not, to support the juvenile court's conclusion. (*In re Francisco D.* (2014) 230 Cal.App.4th 73, 80; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We do not reweigh the evidence, nor do we exercise independent judgment or evaluate the credibility of witnesses. (*In re B.D.* (2007) 156 Cal.App.4th 975, 986.) The court's findings are reviewed in a light most favorable to the challenged order; all conflicts and reasonable inferences are resolved in favor of the order. (*In re Alexis F.* (2009) 171 Cal.App.4th 438, 450–451.)

Section 342, subdivision (a) provides: “In any case in which a minor has been found to be a person described by Section 300 and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Section 300, the petitioner shall file a subsequent petition.” “[T]he fact that a child is currently

the section 342 petition, the children will remain dependents of the juvenile dependency court. We, however, reach the merits of Mother's challenge to the section 342 petition's jurisdiction findings because those findings serve as the basis for disposition orders that she is challenging on appeal. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

protected from further abuse simply because the child already is under the jurisdiction of the juvenile court cannot preclude the court from finding, based upon new evidence of past abuse, that the child remains at risk of abuse. The question to be asked in such a case is whether, in the absence of the state's intervention, there is a substantial risk that the child will be abused. (*In re Carlos T.* (2009) 174 Cal.App.4th 795, 806.)

For the applicable standard to determine risk we look to section 300, subdivision (b)(1), which defines risk as: "The child . . . suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child." (§ 300, subd. (b)(1).)

Mother claims that substantial evidence did not support the finding that she left the children for days without appropriate adult supervision because she made an adequate plan for the children's care while she was in San Francisco. Substantial evidence, however, shows that Mother's plan left them at serious risk. Mother left R.H. and Si.H. at home for 10 days without notifying their father or DCFS, even though the children were dependents of the court, and the family was under DCFS supervision. And, although she asked her friend, L.A., to stay at the house while she was away, L.A. did not act as an appropriate caretaker. At times L.A. was entirely absent, leaving the children alone in the home. At other times L.A. stayed upstairs without checking whether they were even at home, caused them to miss school, and generally left them to fend for themselves. On prior occasions, Mother went out of town, leaving them at home with her roommates. Si.H. was afraid to be home without Mother because he feared someone would break into the house. Thus, the totality of this evidence supports the juvenile court's findings.

Before this court, Mother does not refute this evidence. Instead, Mother maintains that the children never informed her that L.A. was not taking care of them and that had the children done so, she would have made a new plan for their care. We are not convinced. Even if it is true that she was unaware of the lack of care provided by L.A., there is no evidence that she communicated with the children or L.A. to assure that they were safe and in good hands while she was away. Although the children were not physically injured, the juvenile court need not wait for the risk of harm to ripen into actual injury. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) The court may protect the children when the evidence demonstrates that a substantial risk exists that the child will suffer serious harm as a result of the failure or inability of the parent to adequately supervise the child, as it does here. (§ 300, subd. (b)(1).)

Mother's challenge to the dispositional order removing the children from her custody is equally unavailing.

"A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence" that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).)

Although a removal order requires a showing of clear and convincing evidence that there is substantial danger if the child is returned home and the lack of reasonable means short of removal to protect the child's safety, the parent need not be dangerous, and the child need not have been harmed before removal is appropriate. The focus of section 361 is on averting harm to the child. Further,

when making dispositional orders, the juvenile court is not limited to the allegations of the sustained petition and current circumstances; rather, the court may consider all evidence on the question of the proper disposition. (§ 358, subds. (a) & (b); *In re John M.* (2012) 212 Cal.App.4th 1117, 1126; *In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183.)

Mother argues that the court's removal order is infirm because a reasonable means existed to protect the children without removing them from her care. In the juvenile court, she asserted that rather than remove the children from her custody, the court should order her to participate in court-ordered services, or require DCFS to make unannounced visits to her home to ensure the adequacy of the children's care and supervision. Although she apparently abandoned these alternatives on appeal, we reject them on the merits in any case. Those substantially same efforts to protect the children had already been attempted in the case without success. Mother refused to cooperate in the case plan, declaring she had no intent to participate in court-ordered services. Likewise, DCFS made unannounced visits to the home, and although it appeared that Mother was at home at the time, she would not answer the door. Thus, the options Mother proposed at the hearing were not reasonable alternatives to removal.

Before this court, Mother argues for the first time that the juvenile court should have ordered Mother to give the father the right of "first refusal to care for the [children] when [Mother] went out of town again." Given, however, the hostile relationship between the parents, Mother's repeatedly stating that she did not want the children to be with their father, and Mother's failure to comply with other court orders and DCFS directives, it is unlikely that such a plan would be effective. In any case, her conduct in leaving them in the care of an inappropriate supervisor and in not

checking up on them, evinces a danger that she will do other acts that endanger their safety. Accordingly, we conclude that the court did not err in finding that there were no reasonable means of protecting the children without removing them from Mother's custody.

DISPOSITION

The orders of the juvenile court are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

SINANIAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.